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STATEMENT
OF
THE HONORABLE LEE H. HAMILTON
AUGUST 3, 1988
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS

Mr. Chairman, Members of the Committee. I appreciate the opportunity to appear here today to discuss legislation to require the registration of National Security Decision Directives (NSDDs).

I support H. R. 5092 and urge its enactment. It provides for important record and bookkeeping of Presidential documents. It sets out reasonable procedures for registering crucial foreign policy decisions made in secret and for enhancing Congressional oversight. It does so:

-- without any radical changes to current policy,

-- without revealing information which must, for national security reasons, be kept secret, and

-- without restricting the President's ability to make decisions or to carry out his constitutional responsibilities.

This bill would require three principal changes:

First, it would mandate that NSDDs be registered under the provisions of the Federal Register Act and that a copy of each directive be provided to the Speaker of the House and to the President pro tem of the Senate;

Second, it would require that officers and employees of the Executive Office of the President sign a notice of their obligations and requirements concerning the control, management and preservation of Presidential records; and

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Third, it would establish an office of records management within the Executive Office of the President to secure compliance with statutory requirements governing Presidential records.

In my view, the registration of NSDDs and the requirement that they be provided to Congress are important reforms. This legislation is needed to protect against careless handling of Presidential documents. The Iran/Contra investigation showed that Presidential documents were not carefully handled. Some were even destroyed. The investigation revealed a surprising lack of care for key Presidential papers.

NSDDs have increased in number, scope, importance, and authority. They were originally position papers, but in recent years these directives have been used to initiate and determine policy. As of January 1, 1988, President Reagan had issued nearly 300 NSDDs. These important policy documents are beyond the reach of congressional oversight.

Executive branch officials argue that NSDDs involve policy implementation, not policy-making. Often, that is true. But these directives are sometimes significant foreign policy documents that define important policies and establish guidelines. They deserve careful handling and Congressional scrutiny.

The use of secret NSDDs to create policy infringes on Congress's constitutional prerogatives by inhibiting effective oversight and limiting Congress's role in policy-making. NSDDs are revealed to Congress only under irregular, arbitrary or accidental circumstances, if at all. Even the Intelligence Committees do not usually receive copies of NSDDs.

The widespread use of these directives can alter the tenuous balance of power between the Congress and the President. The secrecy and uncertain legality of NSDDs give the President extraordinary power to formulate or alter policy without the knowledge of Congress. The President can amend current NSDDs at will. If Congress cedes to the President the right to withhold information from it, the balance of decision-making power shifts dramatically toward the President.

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In addition to the constitutional reasons, sound, practical reasons require the President to inform Congress of NSDDs. The inclusion of Congressional leadership, the intelligence committees, or some other bipartisan Congressional group would allow for thorough discussion and divergent advice on many important foreign policy decisions.

I support H.R. 5092 for several reasons:

First, it addresses the growing use of National Security Decision Directives as important statements of administration policy;

Second, it is an important first step in trying to obtain better accountability of important foreign policy decisions; and

Third, it will help insure that secret decisions are registered and appropriately disclosed to Congress along with other documents of public policy.

Finally, this bill, if enacted, promotes openness in government, reversing a trend toward greater secrecy in Presidential decision making. Such secrecy promotes undemocratic policy-making, defeats the checks and balances in our system, and prevents accountability. I realize that even if NSDDs are registered, this or the next administration may devise another method to bypass disclosure of information. But whenever Congress is confronted with a procedure which excludes it from policy-making, it must act to ensure its ability to carry out its constitutional responsibilities.

Congress's authority under the Constitution should not be subverted by a secret process. The Congress cannot accept the notion that some important foreign policy decisions can be known only by certain unelected officials in the President's Office.

NSDDs can have profound effects on our security interests. The President must be accountable for them. This legislation is a first step towards greater accountability. Additional steps may be necessary in the future.

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Mr. Chairman, Secrecy is of course sometimes necessary in government. But denying Congress knowledge of key foreign policy decisions is neither necessary nor desirable. With its requirements for registering and reporting NSDDs to Congress, H.R. 5092 represents a modest but important response to excessive secrecy in government.

Thank you.

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